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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 664,465	09 18 2000	Michael Greiner	P00.1757	4315

Schiff Hardin & Waite
Patent Department
233 South Wacker Drive
6600 Floor Sears Tower
Chicago, IL 60606

EXAMINER

YEUNG, GEORGE CHAN PUI

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05 13 2002

Please find below and/or attached an Office communication concerning this application or proceeding.

72-8

Office Action Summary

Application No.

09/664,465

Applicant(s)

Greiner et al

Examiner

George Young

Group Art Unit

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on Jan. 28, 2002
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-30 ☒ are pending in the application.
- Of the above claim(s) 23-28 and 30 ☒ are withdrawn from consideration as a non-elected invention.
- ☐ Claim(s) 1-22 and 29 ☐ is/are allowed.
- ☒ Claim(s) 1-22 and 29 ☐ is/are rejected.
- ☐ Claim(s) ☐ is/are objected to.
- ☐ Claim(s) ☐ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 5
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☒ Other Translation of German Patent
No. DE 3119496

Office Action Summary

DETAILED ACTION

Applicants' election with traverse of the invention of method claims 1-22 and 29 (Group I) in Paper No. 7 is acknowledged. The traversal is on the ground that a search of the cooking process sensor of claims 23-28 and 30 (Group II apparatus) is important also for a search of the method of claims 1-22 and 29. This is not found persuasive because the search and examination of both inventions, i.e. the Group I method and the Group II apparatus, would not be coextensive. Contrary to applicants' contention, the method of claims 1 and 8 does not require a cooking process sensor having a tip equipped with at least two sensors as claimed in apparatus claims 23 and 30. Moreover, the apparatus of Group II is claimed is separate and distinct from the method of Group I since the Group II apparatus can be used to practice another and materially different process, e.g., for use in sensing the temperature of uncooked meat parts such as poultry carcasses during a pasteurization process. The issues raised in the examination of apparatus claims are divergent from those raised in the examination of method claims. While there may be some overlap in the searches of the two inventions, there is no reason to believe that the searches would be identical. Therefore, based on the additional work involved in searching and examining both distinct inventions together, restriction of the distinct inventions is clearly proper.

The requirement is still deemed proper and is therefore made FINAL.

Claims 1-22 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention for the following reasons:

1. The term "specific parameters" recited in claims 1 and 29, line 4 of each, is indefinite since this term has not been sufficiently defined.
2. Claims 1 and 29 are indefinite since it is not clear how thermo-kinetics of the picked-up temperature values can be used for determining specific parameters of the food being cooked.
3. There is no antecedent basis for "the cooking food" recited in claims 1 and 29, line 4 of each. Moreover, it is not clear what is intended by "the cooking food".
4. Regarding claims 1 and 29, it is not clear how the determined parameters can be utilized to control the cooking process which is already controlled by at least two temperature values picked up by the cooking process sensor (see lines 2-3 of claims 1 and 29).
5. Regarding claim 8, the limitation "sensors arranged spaced apart along a direction of penetration of the cooking process sensor" is indefinite because it is unclear whether the sensors are integral parts of the claimed cooking process sensor.
6. Regarding claim 10, it is not clear how the diameter of the food, the type of the food, the degree of ripeness of the food, the storage condition of the food, the swell of the food, the taste of the food, the quality of the food, the browning of the food, the crust forming of the food, the vitamin decomposition of the food, the formation of carcinogenic substance in the food, and the hygiene of the food can be determined as a specific cooking food parameter picked-up by the cooking process sensor, which is inserted into the food during the cooking process.
7. It is not clear what is intended by "storage condition of the cooking food", "quality of the cooking food" and "hygiene of the cooking food" as recited in claim 10.

8. There is no antecedent basis for "the parameter of placement of the cooking process sensor" recited in claim 11.

9. Regarding claims 17 and 20, it is not clear how air flow values can be picked up by the cooking process sensor which is inserted into the food during the cooking process.

10. There is no antecedent basis for "the path of the cooking process" recited in claim 18. Moreover, it is not clear what is intended by "the path of the cooking process".

11. It is not clear what is intended by "a set cooking result" as recited in claim 19.

12. It is also not clear how the protein content of the food can be determined by the cooking process sensor as recited in claim 21.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-22 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hess et al (German Patent No. DE 31 19 496). Hess et al disclose a method for controlling a cooking process, comprising the steps of inserting a cooking thermometer (2) having a skewer-like probe section (4) into a cut of meat to be cooked, the cooking thermometer includes four temperature sensors (I,II,III,IV) arranged on the probe section; and controlling the cooking process in response to at least two temperature values picked up by the cooking thermometer inserted into the cut of meat being cooked. It would have been obvious to determine the core temperature and the surface temperature of Hess et al's meat being cooked via thermo-kinetics of the picked-up

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temperature values followed by utilizing the determined core and surface temperatures for controlling the cooking process since it involves no more than an obvious manipulation of a control limitation and/or operating parameter, i.e. to prevent overcooking of the meat, well within the skill of an ordinary artisan in the field of food technology. The features variously recited in the dependent claims are considered to be obvious matters of routine optimization or choice well within the ordinary skill of one in the cooking art.

Drawing

Figure 2 is objected to because the disclosed element "9" (page 6, line 17 and page 7, line 13) is not labeled in this drawing. Correction is required.

The Houck patent is cited to show a method for cooking large and small quantities of food.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner George C. Yeung whose telephone number is 703 308-3848. The examiner can normally be reached on Monday to Friday from 10:30 A.M. to 7:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703 308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872-9310 for regular communications and 703 872-9311 for After Final communications.

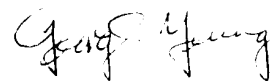
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 305-0661.

Yeung/af
May 10, 2002



GEORGE C. YEUNG
PRIMARY EXAMINER